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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,800	02/13/2001	Roland Kleinstuck	MO-6204/LEA	8484

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BAYER CORPORATION  
PATENT DEPARTMENT  
100 BAYER ROAD  
PITTSBURGH, PA 15205

EXAMINER

LOVERING, RICHARD D

ART UNIT	PAPER NUMBER
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1712

10

DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/762,800

Applicant(s)

KLEINSTUCK ET AL

Examiner

LOVERING

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on SEPT 30, 2002
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-5 AND 8-13 is/are pending in the application.
- Of the above claim(s) 8-13 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-5 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-5 AND 8-13 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 6
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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1. Claims 8-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper No. 9.

2. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hater et al. WO 97/39078 in view of Peroxid-Chemie GMBH GB 1584170. Hater et al. (esp. paragraph bridging pages 5 and 6; page 6, first full paragraph; paragraph bridging pages 6 and 7; and paragraph bridging pages 11 and 12) disclose a composition for treating cooling water comprising aspartic acid-containing polymers and a biocidal oxidizing agent, e.g. hydrogen peroxide. While Hater et al. don't disclose the use of a substituted or unsubstituted amidosulphonic acid, it would have been obvious to one skilled in the art at the time applicants' invention was made to incorporate the amidosulphonic acid disclosed by Peroxid-Chemie in conjunction with hydrogen peroxide (page 2, lines 16-27) into the composition of Hater et

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al. to make the resulting composition more effective in view of the suggestion of Peroxid-Chemie (page 2, lines 12-15).

4. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-5 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claims 1-5 are rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2173.05(1). The omitted structural cooperative relationships are: (The concentrations of a); b); and c). See the specification: Page 6, lines 9-11; page 7, lines 4-16; and page 8, lines 8 and 9.)

6. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record

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doesn't disclose or fairly suggest the composition of claim 4 herein wherein the biodegradable organic polymer having repeating succinyl units contains repeating units of maleic acid, with or without units of fumaric acid.

8. Claim 1 is objected to because of the following informalities: [It fails to recite --and-- after "agent" in line 4. Appropriate correction is required.]

9. Applicants are required to insert the following sentence on page 1 of the specification between the title and the first sentence thereof: --This application is a 371 of PCT/EP 99/05640 filed August 4, 1999.--

9. The remaining references listed on the attached Form PTO-1449 and Form PTO-892 are cumulative to the references applied herein, and/or further show the state of the art.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc  
December 12, 2002

*Richard D. Lovering*  
RICHARD D. LOVERING  
PRIMARY EXAMINER  
GROUP 1200/700